

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

D&Z AUCTION RESELLERS, LLC AND  
GUSTAVO A. MORENO PONCE

Plaintiffs

V.

MEDIA DATA CORPORATION, et als

Defendants

CIVIL NO. CIVIL 19-1242(WGY)

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DIGITAL MILLENIUM ACT

COMPUTER FRAUD AND ABUSE

**MOTION OF FARMACIA LOS ANGELES DE ISABELA LLC, ISLOTE DRUG, INC,  
FARMACIA CUQUIMAR, INC. AND CARMEN REMIGIO KUILIAN Y PEDRO J.  
KUILAN MARRERO, DBA FARMACIA DORADO TO STRIKE AMENDED  
COMPLAINT**

**TO THE HONORABLE COURT:**

COME NOW Farmacia Los Angeles de Isabela Llc, Islote Drug, Inc, Farmacia Cuquimar, Inc., Carmen Remigio Kuilian y Pedro J. Kuilan Marrero, DBA Farmacia Dorado Farmacia Cuquimar, Inc., through their undersigned attorneys and very respectfully states, alleges and prays:

1. The appearing parties filed a motion to dismiss on August 30, 2019. When the 21-day period to amend the complaint of Rule 15 expired and no amendment has been presented nor had plaintiff requested an extension of time to oppose said motion. Hence, the appearing parties requested from the Honorable Court that it decide the motion to dismiss without opposition by plaintiffs.

2. Confronted with the motion to dismiss and a request for the decision of the motion to dismiss, plaintiff filed a motion for extension of time to answer the motion to dismiss<sup>1</sup>, which was granted. Plaintiff opposed the motion to dismiss and stated that it would amend the complaint but did

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<sup>1</sup> Plaintiff did not seek leave to amend the complaint in this motion.

not seek leave to amend said complaint. Hence, the Honorable Court did not issue an order granting leave to amend the complaint. The appearing parties filed a motion requesting leave to file a reply, which is still pending.

3. Rule 15(a)(1)(B) provides plaintiff the absolute right to amend a complaint within 21 days after service of a Rule 12(b) motion. The 21-day period here expired on September 20, 2019 without any amendment by plaintiff. As stated before, plaintiff may amend the complaint at this time with leave of Court but has failed to request such leave. The First Circuit, in *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 11-12 (1<sup>st</sup> Cir. 2004), stated as follows:

A motion to amend a complaint will be treated differently depending on its timing and the context in which it is filed. A plaintiff is permitted to amend a complaint once as a matter of right prior to the filing of a responsive pleading by the defendant. Fed.R.Civ.P. 15(a). Thereafter, the permission of the court or the consent of the opposing party is required.

4. Since the 21-days of Rule 15(a)(1)(B) has expired without an amended complaint and plaintiff has failed to seek permission from the Court, the amended complaint must be stricken from the record. If the Court were to allow said amendment, the appearing parties reserve the right to file a motion to dismiss the amended complaint.

WHEREFORE: The appearing parties respectfully request from the Honorable Court that strike the amended complaint for the reasons stated here.

CERTIFICATE OF SERVICE: That on this same date, a copy of this motion has been sent to all parties through the CM/ECF system.

Respectfully submitted on this 7<sup>th</sup> of October, 2019.

*/s/ John E. Mudd*

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